

OFFICIAL TRANSCRIPT OF PROCEEDINGS BEFORE THE POSTAL RATE COMMISSION

In the Matter of:)
)
MARKET TEST OF REPOSITIONABLE)
NOTES ON FIRST-CLASS MAIL,) Docket No. MC2004-5
STANDARD MAIL, AND PERIODICALS)

VOLUME #1

Date: August 11, 2004
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POSTAL RATE COMMISSION

In the Matter of:)
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MARKET TEST OF REPOSITIONABLE)
NOTES ON FIRST-CLASS MAIL,) Docket No. MC2004-5
STANDARD MAIL, AND PERIODICALS)

Room 300
Postal Rate Commission
1333 H Street, N.W.
Washington, D.C.

Volume 1
Wednesday, August 11, 2004

The above-entitled matter came on for hearing
pursuant to notice, at 11:06 a.m.

BEFORE:

HON. GEORGE A. OMAS, CHAIRMAN
HON. TONY A. HAMMOND, VICE-CHAIRMAN
HON. RUTH Y. GOLDWAY, COMMISSIONER
HON. DANA B. COVINGTON, COMMISSIONER

APPEARANCES:

On behalf of the United States Postal Service:

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APPEARANCES: (cont'd.)

On behalf of the Office of the Consumer Advocate:

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P R O C E E D I N G S

(11:06 a.m.)

CHAIRMAN OMAS: Good morning. This is a prehearing conference in Docket MC2004-5, considering the request of the Postal Service for the establishment of new classifications and rates for the attachment of repositionable notes on the covers of first-class mail, standard mail, and periodicals.

As most of you know, I am George Omas, chairman of the Commission. Commission Order No. 1413 gave notice of the Postal Service request and announced that it would be processed as a request for a provisional service change under subpart J of the Commission's Rules of Practice. That order also authorizes the conduct of settlement discussions.

The reporter in this case is Heritage Reporting Company. There are forms for noting appearance available on the table as you enter the hearing room. If you wish to purchase transcripts, you should see the reporter after today's conference or call (202) 628-4888.

Before proceeding further, I would ask counsel to identify themselves for the record. The United States Postal Service.

MR. REITER: Good morning, Mr. Chairman.

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1 Scott Reiter on behalf of the United States Postal
2 Service.

3 CHAIRMAN OMAS: Association for Postal
4 Commerce.

5 (No response.)

6 CHAIRMAN OMAS: Direct Marketing
7 Association, Inc.

8 (No response.)

9 CHAIRMAN OMAS: Magazine Publishers of
10 America, Inc.

11 (No response.)

12 CHAIRMAN OMAS: Mailing and Fulfillment
13 Service Association.

14 (No response.)

15 CHAIRMAN OMAS: National Newspaper
16 Association.

17 (No response.)

18 CHAIRMAN OMAS: Office of the Consumer
19 Advocate.

20 MS. DREIFUSS: Good morning, Mr. Chairman.
21 I'm Shelley Dreifuss with the Office of the Consumer
22 Advocate.

23 CHAIRMAN OMAS: Thank you. David B. Popkin.

24 (No response.)

25 CHAIRMAN OMAS: Val-Pak Dealers Association,

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1 Inc.

2 (No response.)

3 CHAIRMAN OMAS: Val-Pak Direct Marketing
4 Systems, Inc.

5 (No response.)

6 CHAIRMAN OMAS: Is there anyone whom I have
7 omitted?

8 (No response.)

9 CHAIRMAN OMAS: It is my understanding that
10 a settlement conference was conducted yesterday,
11 August 10th. Mr. Reiter, would you please provide us
12 with a report on the progress toward arriving at a
13 settlement in this case?

14 MR. REITER: Yes, Mr. Chairman. The
15 conference was attended by representatives from OCA,
16 NNA, NPA, Post Com, MFSA, and Postal Service. Mr.
17 Volner, representing Post Com --

18 CHAIRMAN OMAS: Would you speak a little
19 closer to the mike?

20 MR. REITER: Sure. Mr. Volner, representing
21 Post Com and MFSA, indicated that he'll be filing a
22 motion to dismiss the proceeding today. So I don't
23 think that he will be participating in any settlement.
24 The other parties that met had various concerns, but
25 we are going to be continuing discussions with them,

1 and I think the prospects for us to reach some
2 agreement with their various concerns are fairly good.
3 So we won't have an unopposed settlement, but we will
4 have, hopefully, one that is partial and may help the
5 Commission in reaching a recommended decision quickly.

6 I don't think any of the parties -- as you
7 saw, most of them are not here today. I don't think
8 any of them think that we need to have a hearing,
9 although that may be dependent on some answers to
10 discovery that we anticipate will be provided by at
11 least one of the parties within the next few days.
12 But I think the chances for avoiding hearings are also
13 good. As far as I'm aware, no one has raised a real
14 issue of material fact based on what we've filed so
15 far.

16 I also spoke with counsel for DMA and Val-
17 Pak, who were not there. I don't think DMA has quite
18 formulated their position yet, and I don't think that
19 Val-Pak will be taking one. I think that they were
20 just generally interested as opposed to specifically
21 interested, and I don't believe that Mr. Popkin will
22 be taking a position either. So we will be continuing
23 settlement discussions with the various parties.

24 CHAIRMAN OMAS: Thank you, Mr. Reiter.

25 Does any participant wish to add to Mr.

1 Reiter's report?

2 (No response.)

3 CHAIRMAN OMAS: Thank you, Mr. Reiter.

4 There are several outstanding procedural
5 items. First, the Postal Service filed a motion for
6 waiver of certain filing requirements. Commission
7 Order 1413 directed that responses to that motion be
8 submitted by August 6, 2004. No responses in
9 opposition to the Postal Service motion were received.
10 Does any participant wish to log a response in
11 opposition at this time?

12 (No response.)

13 CHAIRMAN OMAS: A procedural order will be
14 issued shortly, there being no objection, a procedural
15 order will be issued shortly after the conclusion of
16 today's conference. The motion for waiver will be
17 addressed in that order.

18 Next is the question of discovery.
19 Yesterday, the National Newspaper Association filed a
20 motion requesting the extension of discovery in this
21 docket through next Monday, April 16th. This morning,
22 the Office of the Consumer Advocate filed a statement
23 indicating it supports that motion. Does any
24 participant want discovery to extend beyond August
25 16th?

1 MS. DREIFUSS: Mr. Chairman, I had only one
2 amendment to my statement this morning, and I don't
3 think it's going to be a problem.

4 The Postal Service intends to file a library
5 reference, which gives the results of a pilot test
6 that they conducted on repositionable notes over a
7 period of a year. They have not filed that report
8 yet, but I spoke to Mr. Reiter this morning, and he
9 thought that they would be able to file it today, and
10 if that's the case, or even if they file it, I would
11 say, within the next two or three business days, OCA
12 can still comfortably submit any necessary
13 interrogatories by August 16th. It would only be a
14 problem for us if we got it on the 16th or later, I
15 would say.

16 CHAIRMAN OMAS: Mr. Reiter, do you have
17 anything to add?

18 MR. REITER: No. As I believe, and as
19 indicated in their motion, we have no objection to
20 having discovery run through the 16th.

21 CHAIRMAN OMAS: Okay. Thank you. The
22 National Newspaper Association motion is, therefore,
23 granted. Discovery will continue through August 16th.

24 I will now turn to the question of whether
25 there are issues of material fact that require an

1 evidentiary hearing in this case. The National
2 Newspaper Association filing also stated that NNA will
3 not be prepared to state whether it will request a
4 hearing in this case until it receives responses to
5 its discovery.

6 There has been some confusion in recent
7 cases concerning what is meant by an evidentiary
8 hearing. I am using that term to include additional
9 steps for developing an evidentiary record, including
10 either cross-examination of the Postal Service
11 witnesses supporting the request or the opportunity to
12 provide witnesses opposing some aspects of the
13 request.

14 With that in mind, parties wishing either to
15 cross-examine the Postal Service or to present direct
16 testimony in this case are expected to provide written
17 statements to that effect by the close of business
18 today. Participants are also to identify in that
19 statement the issues of material fact that justify the
20 conduct of an evidentiary hearing.

21 I will treat the National Newspaper
22 Association motion as also seeking an extension of
23 time to submit such a filing until seven days after it
24 receives responses to its discovery. I will grant
25 that request. NNA is on notice that should it request

1 an evidentiary hearing, it will be expected to support
2 its request with a statement explaining what issues of
3 material fact justify its request.

4 Does any other participant know at this time
5 that they will be filing a request for an evidentiary
6 hearing in this case?

7 (No response.)

8 CHAIRMAN OMAS: Mr. Reiter, on the chance
9 that there may be a request for cross-examination of
10 the Postal Service's direct case, would you please
11 find out whether your witnesses can be available on
12 September 10, 2004?

13 MR. REITER: I will, Mr. Chairman.

14 CHAIRMAN OMAS: Thank you. Are there any
15 other matters that participants wish to raise at this
16 time?

17 (No response.)

18 CHAIRMAN OMAS: There being none, I thank
19 you for being here today. I have nothing further.
20 This prehearing conference is adjourned. Thank you.

21 (Whereupon, at 11:17 a.m. the prehearing
22 conference in the above-entitled matter was
23 concluded.)

24 //

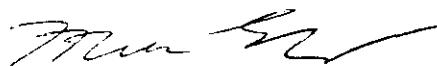
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REPORTER'S CERTIFICATE

DOCKET NO.: *MC 2004-5*
CASE TITLE: *Market Test of Responsible Notes*
HEARING DATE: *8-11-04*
LOCATION: *Washington, DC*

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the *Postal Rate Commission*

Date: *8-11-04*



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